

DOCKET FILE COPY ORIGINAL

12:45 0002-04-06 AUG

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED  
AUG 4 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Satellite Home )  
Viewer Improvement Act of 1999 )  
 )  
Broadcast Signal Carriage Issues )

CS Docket No. 00-96

To: The Commission

REPLY COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("Paxson") hereby submits these Reply Comments in response to the Commission's *Notice of Proposed Rule Making* (the "Notice") concerning the broadcast signal carriage obligations of direct-to-home ("DTH") satellite providers under the Satellite Home Viewer Improvement Act of 1999 (the "SHVIA"). In its comments, Paxson urged the Commission to help preserve the viability of free, over-the-air broadcasting and the multiplicity of media voices by adopting fair and effective must-carry rules that are as comparable as possible to those applicable to cable systems. Commenters raised three issues in this proceeding that warrant a brief response.

The Satellite Must-Carry Rules Are Constitutional.

The Supreme Court has concluded that the cable must-carry requirements satisfy intermediate scrutiny under the *O'Brien* test because they advance the important government interests of preserving the benefits of free, over-the-air local broadcast television signals and promoting the widespread dissemination of information from a multiplicity of sources.<sup>1</sup> The same government interests are protected and promoted through comparable carriage requirements on

<sup>1</sup> *Turner Broadcasting Systems, Inc. v. FCC*, 117 S.Ct. 1174, 1197 (1997).

No. of Copies rec'd 014  
List ABCDE

the cable industry's biggest competitor – the direct-to-home ("DTH") satellite industry. As such, it is truly remarkable that the DTH satellite industry sought fit to submit comments in this proceeding challenging the settled constitutionality of mandatory broadcast signal carriage requirements.

While DTH satellite providers differ from local cable operators in the national scope of their service, they share with the cable industry a true bottleneck control over access to television viewers. Contrary to their repeated and overused claims to the contrary, the satellite broadcast industry is not engaged in a nascent business worthy of special exemptions from the rules applicable to their cable brethren. As the National Cable Television Association pointed out in its Comments, DirecTV has more subscribers than all but the two largest cable multiple system operators ("MSOs"), and EchoStar has more subscribers than the seventh largest MSO.<sup>2</sup> These companies have each experienced tremendous growth – especially since Congress granted a compulsory copyright for local-into-local service late last year. As Paxson reported in its Comments, DTH penetration has been increasing significantly and already exceeds 15% in thirty-five television markets.

As a result of this tremendous market power, DirecTV and EchoStar have each witnessed their market capitalization surpass the ten billion dollar level. While they may seem unlikely candidates for government benefits, DirecTV, EchoStar and other DTH satellite providers received by legislative grace a compulsory copyright license covering local-into-local broadcast programming. In return, the DTH satellite providers must abide by the SHVLA's mandatory carriage requirements. By challenging these requirements, the DTH satellite industry is seeking nothing less than the ability to "eat their cake and have it too." Thankfully, our system of

---

<sup>2</sup> Comments of National Cable Television Association at 1.

government – and constitutional jurisprudence – do not function for the sole benefit of the DTH satellite industry.

The fact is that DTH satellite providers, due to their sizable (and growing) market power, already have attained the ability to threaten the survival of local television stations. Today, local television stations that are not carried by DTH satellite providers stand to lose a significant portion of their audience – already up to 20% of local audiences in some areas. Audience losses translate directly into revenue losses for these stations; for some stations, the losses already may approach 20%. Revenue losses such as these will have a devastating effect on the viability of uncarried television stations – especially independent and specialty stations that provide crucial local service to their communities.

In adopting the SHVIA, Congress recognized the simple marketplace fact that DTH satellite providers, like local cable operators, threaten the economic viability of local broadcasters. For this reason, Congress properly concluded that satellite must-carry provisions are warranted.

As satellite providers increase their share of the multichannel video programming market, the need for fair and effective mandatory carriage rights in the satellite context is every bit as important to the health of the television industry as cable mandatory carriage rights were in 1992. Accordingly, the important government interests justifying the cable must-carry rules similarly provide more than ample constitutional justification for the SHVIA's satellite must-carry requirements.

**The FCC Has No Authority To Modify The Satellite  
Must-Carry Market of Local Television Stations.**

In its Comments, Paxson explained that the Commission does not have the authority to modify the definition of "local market" for satellite must-carry purposes. In contrast to the statutory cable must-carry requirements, the SHVIA grants the Commission an extremely limited role in determining satellite must-carry markets. While Congress specifically defined a television

station's "local market" for satellite must-carry purposes with reference to a Nielsen publication, it did not authorize the Commission to approve any other changes to a television station's market.<sup>3</sup> As a result, the Commission may not, as suggested in the *Notice*, permit the modification of a station's satellite must-carry market.<sup>4</sup>

DirecTV comments that the Commission cannot and should modify local markets for satellite must-carry purposes: "Any attempt to conform the [cable and satellite local market definition] mechanisms would not only run afoul of the Commission's authority under the SHVIA, but [it] would likely lead to absurd results."<sup>5</sup> Indeed, DirecTV submits that the SHVIA affirmatively "preclude[s]" any attempt by the Commission to conform satellite and cable must-carry markets.<sup>6</sup> As explained more fully in Paxson's Comments and DirecTV's Comments, this position faithfully adheres to the text and expressed intent of the SHVIA.

Curiously, however, DirecTV abandons its forceful and well-reasoned analysis to argue that DTH satellite providers – rather than the Commission – should be able to modify local markets. Under DirecTV's proposal, a DTH satellite provider would be able to reduce a television station's local market for satellite must-carry purposes as it saw fit.<sup>7</sup> This is absurd on its face. Granting a DTH satellite provider the unfettered discretion to reduce a station's must-carry market would create an exception that literally would swallow the rule. Such a result would clearly contravene the expressed intent of Congress, which sought to grant mandatory carriage rights for television stations throughout their DMAs. Moreover, DirecTV's proposal is foreclosed

<sup>3</sup> See 47 U.S.C. § 338(h)(3); 17 U.S.C. § 122(j).

<sup>4</sup> See *Notice* at ¶ 16. Nor may the Commission, as also suggested in the *Notice*, apply previously decided cable market modification decisions to alter the definition of a television station's "local market" for satellite must-carry purposes.

<sup>5</sup> Comments of DirecTV at 16.

<sup>6</sup> *Id.* at 17.

<sup>7</sup> *Id.* at 21.

by the express terms of the SHVIA, which, as DirecTV itself pointed out, specifically defines the applicable "local market" for must-carry purposes. Consequently, the Commission should waste no time considering DirecTV's market modification proposal.

**The Commission Should Adopt Detailed Digital Must-Carry Requirements.**

The SHVIA requires the Commission to impose digital broadcast signal carriage obligations on DTH satellite providers that are "comparable" to those it imposes on cable operators.<sup>8</sup> As explained in Paxson's Comments, the Commission can require satellite carriage of **DTV signals in place of analog signals** and simultaneously facilitate an expansion of local-into-local service due to recent advances in compression technology.

Paxson agrees with the Satellite Broadcasting and Communication Association, DirecTV, and others that the Commission should not require the simultaneous carriage of both analog and digital signals of the same television station by the same cable operator or DTH satellite provider. Rather than a dual carriage right, a television station may elect mandatory carriage rights for either its analog signal or its digital signal prior to the end of the DTV transition period, beginning on January 1, 2002 – the very first day of satellite must-carry rules. A station electing carriage of its digital signal should be assured, however, that the DTH satellite provider will carry all of its programming streams, pursuant to a phase-in schedule discussed in Paxson's Comments.

Paxson's proposed DTV carriage rules would facilitate the timely and efficient transition to DTV service. Consequently, the application of these rules to satellite providers would further serve to enhance the public interest in completing the DTV transition quickly. Significantly, application of these rules to DTH satellite providers also would provide additional spectrum with which they may begin carriage of television stations in additional local markets, inasmuch as they would not be required to carry both the analog and DTV signal. Consequently, the Commission

---

<sup>8</sup> 47 U.S.C. § 338(g).


should adopt detailed rules governing the exercise of television stations' right to mandatory carriage of all programming streams included in their digital signals.

### Conclusion

Paxson looks forward to the Commission's successful implementation of the satellite must-carry rules in a manner that preserves the viability of free, local, over-the-air television broadcasting and that ensures reasonable equality between the DTH satellite and cable industries.

Respectfully submitted,

PAXSON COMMUNICATIONS CORPORATION

By: 

William L. Watson  
Vice President & Assistant Secretary

Paxson Communications Corporation  
601 Clearwater Park Road  
West Palm Beach, FL 33401  
(561) 659-4122

August 4, 2000